

# Exhibit 1



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15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**  
17

18 CREATIVE INTEGRATED  
19 SYSTEMS, INC.,

20 Plaintiff,

21 v.

22 NINTENDO OF AMERICA, INC.;  
NINTENDO CO., LTD.; MACRONIX  
23 AMERICA, INC.; and MACRONIX  
INTERNATIONAL CO., LTD.; and  
24 DOES 1-10 Inclusive,

25 Defendants.

CASE NO. CV-2735 AHM (VBKx)

**THIRD AMENDED COMPLAINT  
FOR INFRINGEMENT OF UNITED  
STATES PATENT NOS. 5,241,497  
AND 5,812,461**

**JURY TRIAL DEMANDED**

26 Plaintiff Creative Integrated Systems, Inc. ("Creative"), for its Third  
27 Amended Complaint against Defendants Nintendo of America, Inc. ("Nintendo  
28



America”), Nintendo Co., Ltd. (“Nintendo Japan”), Macronix America, Inc. (“Macronix America”), and Macronix International Co., Ltd. (“Macronix Taiwan”) (collectively, “Defendants”) hereby alleges as follows:

### **JURISDICTION AND VENUE**

1. This is a civil action for infringement of United States Patent Nos. 5,241,497 (“the ‘497 Patent”) and 5,812,461 (“the ‘461 Patent”). This action is based upon the Patent Laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-285. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. This Court has personal jurisdiction over the Defendants because each of the Defendants has conducted business and sells its products in this judicial district and, furthermore, each of the Defendants has committed acts of infringement in this judicial district by using, advertising, marketing, offering for sale, and selling products that infringe, directly or indirectly, the ‘497 and/or ‘461 Patents in this judicial district.

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c), and/or (d), and 28 U.S.C. § 1400(b), because, inter alia, each Defendant is subject to personal jurisdiction in this District. In addition, Defendants Nintendo Japan and Macronix Taiwan, as alien corporations, are deemed to reside in this District under 28 U.S.C. § 1391(d).

### **THE PARTIES**

4. Creative is a corporation organized under the laws of the State of California, having a principal place of business in this District at 1700 East Garry Avenue, Suite 112, Santa Ana, California, 92705.

5. Creative is the owner of and has the right to sue for infringement of the ‘497 and ‘461 Patents.

6. On information and belief, Defendant Nintendo Co., Ltd. (“Nintendo Japan”) is a Japanese corporation, having a place of business at 11-1 Kamitoba



1 Hokotate-cho, Minami-ku, Kyoto, Japan. Nintendo Japan manufactures, markets,  
2 and sells, under the Nintendo label, a variety of video and other electronic games  
3 and entertainment systems for, among other things, importation, use, and/or sale into  
4 the United States, including this District.

5 7. On information and belief, Defendant Nintendo of America, Inc.  
6 (“Nintendo America”) is a corporation organized under the laws of the State of  
7 Washington, having a place of business at 4820 150th Avenue NE, Redmond,  
8 Washington, 98052. Nintendo America is a wholly-owned subsidiary of Nintendo  
9 Japan. Nintendo America distributes, markets, and sells, under the Nintendo label, a  
10 variety of video and other electronic games and entertainment systems. Upon  
11 information and belief, Nintendo America is the exclusive seller of Nintendo-  
12 labeled products into the United States.

13 8. On information and belief, Defendant Macronix International Co., Ltd.  
14 (“Macronix Taiwan”) is a Taiwanese corporation, having a place of business at No.  
15 16, Li-Hsin Rd., Hsinchu Science Park, Hsinchu, Taiwan. Macronix Taiwan  
16 manufactures, markets, and sells, under the Macronix label, a variety of  
17 semiconductor chips for, among other things, importation, use, and/or sale into the  
18 United States, including this District.

19 9. On information and belief, Defendant Macronix America, Inc.  
20 (“Macronix America”) is a corporation organized under the laws of the State of  
21 California, having a place of business at 680 N. McCarthy Blvd., Milpitas,  
22 California, 95035. Macronix America is a wholly-owned subsidiary of Macronix  
23 Taiwan. Macronix America distributes, markets, and sells Macronix-labeled  
24 semiconductor chips in the United States and in this District. Upon information and  
25 belief, Macronix America is the exclusive seller of Macronix-labeled devices into  
26 the United States.



**BACKGROUND**

10. On August 31, 1993, the '497 Patent, entitled "VLSI Memory with Increased Memory Access Speed, Increased Memory Cell Density and Decreased Parasitic Capacitance" was duly and legally issued to Creative as assignee. The named inventor of the '497 Patent is Mr. Komarek. A copy of the '497 Patent is attached hereto as Exhibit A.

11. On September 22, 1998, the '461 Patent, entitled "Driver Circuit for Addressing Core Memory and a Method for the Same," was duly and legally issued to Creative as assignee. The named inventors on the '461 Patent are Mr. Komarek, Clarence W. Padgett, Robert D. Amneus, and Scott B. Tanner. A copy of the '461 Patent is attached hereto as Exhibit B.

12. In October 1988, James A. Komarek and Shiro Fujioka d/b/a California Integrated Systems entered into a development and license agreement with Ricoh Company, Ltd. ("RicoH"), a Japanese Corporation, pursuant to which Mr. Komarek was to design and develop various Read-Only-Memory (ROM) designs having, among other things, fast memory access speed, high memory cell density, and reduced parasitic capacitance. Mr. Komarek subsequently formed Creative Integrated Systems, Inc. (the plaintiff in this action and the assignee/owner of the '497 and '461 Patents). Mr. Komarek conceived the inventions claimed in the '497 Patent and, along with the other named inventors, the inventions claimed in the '461 Patent during this ROM design work.

13. Beginning in mid- to late 1990, pursuant to the October 1988 development and license agreement, Ricoh made, or had made, ROM chips, which, upon information and belief, were sold to Nintendo Japan. Creative received royalty payments for such ROM chip sales made by Ricoh for Nintendo Japan up to approximately October 1997. Upon information and belief, in approximately 1997, Nintendo Japan ceased purchasing ROM chips made by Ricoh.



1           14. In 1994, Creative made a proposal to Nintendo Japan to license  
2 Nintendo Japan (as well as other Nintendo entities, including Nintendo America) to  
3 make and sell ROM chips incorporating the invention of the '497 Patent. This  
4 proposal was made to Nintendo Japan through an intermediary, Kazuyoshi Matsuo.  
5 Mr. Matsuo was formerly employed by Ricoh and was the primary contact between  
6 Ricoh and Nintendo Japan relating to Creative's licensed ROM chip sales to  
7 Nintendo Japan. Mr. Matsuo subsequently became the president of Creative Design,  
8 Inc. of Japan (a separate and unrelated company from Creative). Creative was led to  
9 understand that Mr. Matsuo had intimate knowledge of Nintendo Japan's business  
10 organization, products, and personnel and could, therefore, act as an intermediary  
11 between Creative and Nintendo Japan. The use of such an intermediary with  
12 knowledge and experience in Japanese business practices and personal relationships  
13 with a Japanese company with which an American company desires to do business  
14 was a common practice at that time. Mr. Matsuo's primary contacts at Nintendo  
15 Japan during this time period were Nobuo Nagai, General Manager, Purchasing 1  
16 Department, and Masayuki Uemura, General Manager, R&D 2.

17           15. On February 23, 1994, Creative sent a written proposal to Nintendo  
18 Japan, through Mr. Matsuo, in which Creative proposed to license Nintendo Japan  
19 to make and sell ROM chips incorporating the invention of the '497 patent. This  
20 proposal was sent to Mr. Matsuo and, upon information and belief, provided to  
21 Nintendo Japan. This proposal identified Creative's '497 Patent and included the  
22 cover page of the '497 Patent.

23           16. Following Creative's February 23, 1994 proposal, Mr. Matsuo  
24 requested, upon information and belief on behalf of Nintendo Japan, additional  
25 information regarding Creative's '497 Patent, including its priority date, a summary  
26 of its inventions, and its advantages over a patent assigned to and owned by  
27 Macronix Taiwan, U.S. Patent No. 5,117,389 ("the Macronix '389 Patent"). In  
28 March and April 1994, Creative provided Mr. Matsuo with the additional



1 information requested relating to Creative's '497 Patent, as well as its comparison to  
2 the Macronix '389 Patent. Mr. Matsuo subsequently represented to Creative that  
3 Nintendo's position was that the ROM chips being purchased by Nintendo Japan  
4 from Macronix Taiwan had a design layout as depicted in the Macronix '389 Patent  
5 and, therefore, allegedly was different from that of the claimed inventions of the  
6 Creative patents. Creative had no reason to disbelieve Mr. Matsuo's representation  
7 of Nintendo's position or the design of the ROM devices it was, at that time,  
8 purchasing from Macronix Taiwan for use in Nintendo-labeled products being  
9 marketed at that time.

10 17. In addition to providing Nintendo Japan with specific information  
11 identifying the '497 Patent, Creative also communicated to Nintendo Japan that  
12 Creative possessed a portfolio of patents and/or patent applications relating to ROM  
13 chips and related technology. For example, the '461 Patent, which issued on  
14 September 22, 1998, is based upon an application derived from the application that  
15 led to the issuance of the '497 Patent on August 31, 1993. Creative proposed a  
16 program in which its patent portfolio, including subsequently issued patents, in the  
17 same or similar technological field would be licensed to Nintendo Japan. Further, it  
18 was understood that Creative's license proposals for its '497 Patent, as well as  
19 subsequently issued patents in the same or substantially technological field, would  
20 be licensed to Nintendo Japan for the making, use, sale, offer for sale, and  
21 importation into the United States, such that Nintendo America would also be  
22 licensed to the Creative patents in order to sell Nintendo brand products  
23 incorporating the inventions of the Creative patents in the United States.

24 18. In furtherance of Creative's licensing proposals to Nintendo, Shiro  
25 Fujioka, Creative's Executive Vice President, and Mr. Matsuo personally met with  
26 Mr. Nagai and Mr. Uemura at Nintendo Japan's office in Japan in May 1994, at  
27 which meeting Creative further discussed its proposal to license Nintendo Japan the  
28 rights to the ROM chips incorporating the inventions of Creative's patents,



1 including the '497 Patent. Discussions between Creative and Nintendo continued  
2 into 1995, but no agreement was ever reached.

3 19. Upon information and belief, based at least on Creative's sale of ROM  
4 chips to Nintendo Japan through Ricoh and Creative's communications to Nintendo  
5 Japan regarding a license to make and sell ROM chips under Creative's patent  
6 rights, including the '497 Patent, Nintendo Japan had actual knowledge of, or reason  
7 to know of, Creative's '497 Patent as early as February 1994.

8 20. Upon information and belief, based on the information exchanged  
9 between Nintendo Japan and Macronix Taiwan relating to, for example, the sale and  
10 manufacture of ROM chips and the existence and comparison of patents owned by  
11 Creative and Macronix Taiwan, respectively, Macronix Taiwan had actual  
12 knowledge of, or reason to know of, Creative's '497 Patent as early as February  
13 1994.

14 21. In November 2004, Nintendo Japan released for sale in Japan and  
15 North America (including in the United States through Nintendo America) a  
16 handheld game console marketed as the Nintendo DS™. In June 2006, Nintendo  
17 Japan released for sale in the United States through Nintendo America a handheld  
18 game console marketed as the Nintendo DS™ Lite. Nintendo Japan has  
19 subsequently released Nintendo DSi™ and Nintendo DS XL™ handheld game  
20 consoles for sale in the United States. Each of the Nintendo DS™, Nintendo DS™  
21 Lite, Nintendo DSi™ and Nintendo DS XL™ handheld game consoles  
22 (collectively, "Nintendo DS devices") are adapted to require the use of "game  
23 cards" or cartridges ("Nintendo DS game cartridges"), which contain proprietary  
24 mask ROM devices. The mask ROM devices for Nintendo DS game cartridges are  
25 manufactured for Nintendo Japan by Macronix Taiwan. The mask ROM devices  
26 used in the Nintendo DS game cartridges manufactured for Nintendo by Macronix  
27 Taiwan incorporate the inventions of Creative's '497 and '461 Patents, without  
28 authority by Creative. The mask ROM devices used in the accused Nintendo DS



1 game cartridges do not employ the mask ROM design depicted in the Macronix  
2 '389 Patent, which was represented to be the mask ROM design used in Nintendo  
3 products in approximately 1994. The infringing Macronix mask ROM devices used  
4 in the Nintendo DS game cartridges include, at least the Macronix-labeled  
5 MX23L51208 ROM device. According to Nintendo America, there were over 930  
6 Nintendo DS game cartridge titles available as of August 2009.

7 22. In November 2006, Nintendo Japan released for sale in the United  
8 States through Nintendo America a new home video game console marketed as the  
9 Nintendo Wii™. The Nintendo Wii™ console incorporates as part of its storage  
10 memory a mask ROM device that is manufactured by Macronix Taiwan. The mask  
11 ROM device used in the Nintendo Wii™ incorporates the inventions of Creative's  
12 '497 and '461 Patents, without authority by Creative. Moreover, the mask ROM  
13 devices used in the Nintendo Wii™ console do not employ the mask ROM design  
14 depicted in the Macronix '389 Patent, which was represented to be the mask ROM  
15 design used in Nintendo products in approximately 1994. The infringing Macronix  
16 ROM device used in the Nintendo Wii™ includes, at least, the Macronix-labeled  
17 MX23L4005 ROM device.

18 23. Accordingly, since November 2004, Nintendo brand products  
19 incorporating Macronix-manufactured ROM devices and embodying the inventions  
20 claimed in the '497 and '461 Patents, including at least Nintendo DS game  
21 cartridges and Nintendo Wii consoles, have been and are currently being used,  
22 offered for sale, or sold, without authority from Creative, in the United States by  
23 Nintendo America. Nintendo America has, therefore, committed acts of direct  
24 infringement of Creative's '497 and '461 Patents.

25 24. Nintendo Japan imports into the United States, and Nintendo America  
26 sells or offers to sell within the United States, Nintendo DS game cartridges to  
27 consumers, or end users, for use with Nintendo DS devices. Nintendo Japan imports  
28 into the United States, and Nintendo America sells or offers to sell within the United



1 States, Nintendo Wii consoles to consumers, or end users. The end users of  
2 Nintendo DS game cartridges used with Nintendo DS devices and Nintendo Wii  
3 consoles directly infringe one or more method claims of the '497 Patent. Nintendo  
4 Japan and/or Nintendo America advertise, promote, direct, and instruct the use of  
5 Nintendo DS game cartridges and Nintendo Wii consoles by end users within the  
6 United States by, among other things, providing advertisements, promotional  
7 material, user manuals, brochures, and instructions to the end users. Such materials  
8 are provided with the packaging for Nintendo DS devices, Nintendo DS game  
9 cartridges, and Nintendo Wii products. Additionally, such materials, including  
10 promotional materials and instructions, are available to end users for downloading  
11 from Nintendo's website, [www.nintendo.com](http://www.nintendo.com). Upon information and belief,  
12 Nintendo Japan and/or Nintendo America created, directed the creation of,  
13 approved, and disseminated such materials promoting, advertising, and instructing  
14 the use of the accused Nintendo DS game cartridges and Nintendo Wii consoles to  
15 end users of those accused products within the United States, where the use of the  
16 accused Nintendo DS game cartridges and Nintendo Wii consoles by end users  
17 within the United States directly infringes one more method claims of the '497  
18 Patent.

19 25. In addition to the mask ROM devices sold to Nintendo Japan for  
20 incorporation into Nintendo-labeled products sold in the United States, upon  
21 information and belief, Macronix Taiwan has made, used, offered for sale, or sold  
22 mask ROM chips incorporating the inventions of the '497 and '461 Patents, without  
23 authority from Creative, which are imported into the United States to its wholly  
24 owned subsidiary, Macronix America, for sale or offer for sale in the United States.

25 26. Accordingly, upon information and belief, Macronix brand ROM chips  
26 embodying the inventions claimed in the '497 and '461 Patents were made, used,  
27 offered for sale, sold and/or imported into the United States, without authority from  
28



1 Creative, by Macronix America. Macronix America has, therefore, committed acts  
2 of direct infringement of Creative's '497 and '461 Patents.

3 27. Upon information and belief, in at least the last six years, Macronix  
4 Taiwan has sold to and continues to sell to Nintendo Japan, and Nintendo Japan has  
5 purchased and continues to purchase from Macronix Taiwan, ROM chips  
6 incorporating the invention of the '497 Patent for use in Nintendo brand products  
7 that are imported, used, and/or sold, without authority from Creative, in the United  
8 States, including Nintendo brand products distributed to Nintendo America for sale  
9 in the United States and/or directly sold by Nintendo America in the United States.

10 28. Both Macronix Taiwan and Nintendo Japan had actual or constructive  
11 knowledge of, or acted with deliberate indifference by disregarding, Creative's '497  
12 Patent, during which time and at least for the last six years, that Macronix Taiwan  
13 has sold to and continues to sell to Nintendo Japan, and Nintendo Japan has  
14 purchased and continues to purchase from Macronix Taiwan, ROM chips  
15 incorporating the invention of the '497 Patent for use in Nintendo brand products  
16 that are imported, used, and/or sold without authority in the United States, including  
17 Nintendo brand products distributed to Nintendo America for sale in the United  
18 States and/or directly sold by Nintendo America in the United States and Macronix  
19 brand products distributed to Macronix America for sale in the United States.

20 29. Upon information and belief, Macronix Taiwan is the exclusive  
21 supplier of mask ROM devices for the Nintendo DS™, Nintendo DS™, and  
22 Nintendo Wii™ products sold in the United States. Accordingly, Macronix Taiwan  
23 specifically intended to encourage the making, use, sale, offer for sale, or  
24 importation into the United States by Nintendo Japan and/or Nintendo America of  
25 mask ROM devices (including at least the Macronix-labeled MX23L51208 ROM  
26 device and MX23L4005 ROM device). Therefore, Macronix has induced the direct  
27 infringement by Nintendo America of Creative's '497 Patent. In addition, Macronix  
28 America is a wholly owned subsidiary of Macronix Taiwan and, upon information



1 and belief, is the exclusive seller of Macronix products in the United States.  
2 Therefore, by selling, providing, or distributing mask ROM devices incorporating  
3 the invention of Creative's '497 Patent to Macronix America for sale in the United  
4 States, Macronix Taiwan specifically intended to encourage the making, use, sale,  
5 offer for sale, or importation into the United States by Macronix America of ROM  
6 chips incorporating the inventions of the '497 Patent, and therefore, has actively  
7 induced the direct infringement by Macronix America of Creative's '497 Patent.  
8 Further, and by way of example, upon information and belief, Macronix Taiwan  
9 directed, approved of, or created materials promoting and advertising Macronix  
10 ROM chips incorporating the invention of Creative's '497 Patent which materials  
11 were intended to be used by Macronix America to promote the sales and use of such  
12 ROM chips in the United States. One example of such materials is the website  
13 ([www.macronix.com](http://www.macronix.com)) that advertises and promotes the use and sale of Macronix  
14 ROM chips, including ROM Chips incorporating the invention of Creative's '497  
15 Patent.

16 30. Moreover, Macronix Taiwan's actual or constructive knowledge of  
17 Creative's '497 Patent may be imputed to Macronix America, based at least on the  
18 fact that Macronix America is a wholly owned subsidiary of Macronix Taiwan and  
19 is the exclusive seller of Macronix products in the United States.

20 31. Nintendo America is a wholly owned subsidiary of Nintendo Japan  
21 and, upon information and belief, is the exclusive seller of Nintendo products in the  
22 United States. The president of Nintendo America, Tatsumi Kimishima, is also on  
23 the board of directors of Nintendo Japan, and, upon information and belief, there  
24 were common officers or directors of Nintendo Japan and Nintendo America at all  
25 times since at least 1994. Therefore, by selling, providing, or distributing Nintendo  
26 products (including Nintendo proprietary game cards incorporating infringing mask  
27 ROM devices for use in the Nintendo DS™, Nintendo DS™ Lite, and Nintendo  
28 Wii™ products), Nintendo Japan specifically intended to encourage the making,



1 use, sale, offer for sale, or importation into the United States by Nintendo America  
2 (Nintendo Japan's wholly owned subsidiary) of ROM chips incorporating the  
3 invention of the '497 Patent, and therefore, has actively induced the direct  
4 infringement by Nintendo America of Creative's '497 Patent. For example, upon  
5 information and belief, Nintendo Japan directed, approved of, or created materials  
6 promoting and advertising Nintendo proprietary game cards for use in the Nintendo  
7 DS™ and Nintendo DS™ Lite, which materials were intended to be used by  
8 Nintendo America to promote the sales and use of such game cards in the United  
9 States. Similarly, and by way of example, upon information and belief, Nintendo  
10 Japan directed, approved of, or created materials promoting and advertising the  
11 Nintendo Wii™ product, which materials were intended to be used by Nintendo  
12 America to promote the sales and use of the Nintendo Wii™ in the United States.  
13 One example of such materials is the website (www.nintendo.com) that advertises  
14 and promotes the use and sale of Nintendo proprietary game cards incorporating the  
15 infringing Macronix ROM devices for use in Nintendo DS™ and Nintendo DS™  
16 Lite products and the use and sale of the Nintendo Wii™ product incorporating the  
17 infringing ROM devices.

18 32. Moreover, Nintendo Japan's actual or constructive knowledge of  
19 Creative's '497 Patent may be imputed to Nintendo America, based at least on the  
20 fact that Nintendo America is a wholly owned subsidiary of Nintendo Japan, is the  
21 exclusive seller of Nintendo products in the United States, and there are common  
22 officers and directors to both Nintendo Japan and Nintendo America.

23 33. As described in the foregoing paragraphs, each Defendant had actual  
24 knowledge of, or acted in an objectively reckless manner in disregard of and with  
25 deliberate indifference to, Creative's intellectual property rights, including  
26 Creative's '497 Patent, such that each Defendant's infringement of the '497 Patent  
27 is willful.

28



**FIRST CLAIM FOR RELIEF**

**(INFRINGEMENT OF U.S. PATENT NO. 5,241,497  
AGAINST ALL DEFENDANTS)**

34. Paragraphs 1 through 33 are incorporated by reference as if restated fully herein.

35. Each of the Defendants has infringed at least one claim of the '497 Patent.

36. The exemplary infringing products include Macronix MX23L512 ROM devices as well as Macronix MX23L4005 ROM devices incorporated in Nintendo Wii game consoles and Macronix MX23L51208 ROM devices incorporated in Nintendo proprietary game cards used in the Nintendo DS products.

37. Upon information and belief, Nintendo America directly infringed at least one claim of the '497 Patent by making, using, offering for sale, and/or selling in the United States, and/or importing into the United States, without authority by Creative, products including Macronix ROM devices such as Macronix MX23L4005 ROM devices incorporated in Nintendo Wii game consoles and Macronix MX23L51208 ROM devices incorporated in Nintendo DS game cartridges.

38. Upon information and belief, Nintendo Japan actively induced the direct infringement by other persons, including Nintendo America. Nintendo Japan had actual knowledge of, or acted in an objectively reckless manner in disregard of and with deliberate indifference to, the '497 Patent, at the time of the infringing acts, and further knew and intended that infringing products including Macronix ROM devices such as Macronix MX23L4005 ROM devices incorporated in Nintendo Wii game consoles and Macronix MX23L51208 ROM devices incorporated in Nintendo DS game cartridges were being used, sold, or offered for sale in, or imported into, the United States by its wholly owned subsidiary, Nintendo America, without authority by Creative.



1           39. In addition, Nintendo Japan and Nintendo America actively induced the  
2 infringement of one or more method claims of the '497 Patent. Nintendo Japan and  
3 Nintendo America had actual knowledge of, or acted in an objectively reckless  
4 manner in disregard of and with deliberate indifference to, the '497 Patent, at the  
5 time of the direct infringement by consumers and end users of the Nintendo DS  
6 game cartridges used with Nintendo DS devices and the Nintendo Wii product, and  
7 further knew and specifically intended (through instruction, advertising, promotion,  
8 and other means) that consumers and other end users in the United States would use  
9 the accused Nintendo DS game cartridges with Nintendo DS devices and also use  
10 the accused Nintendo Wii games, where such accused Nintendo products included  
11 infringing Macronix ROM devices such as Macronix MX23L4005 ROM devices  
12 incorporated in Nintendo Wii game consoles and Macronix MX23L51208 ROM  
13 devices incorporated in Nintendo DS game cartridges.

14           40. Upon information and belief, Macronix America directly infringed at  
15 least one claim of the '497 Patent by making, using, offering for sale, and/or selling  
16 in the United States, and/or importing into the United States, without authority by  
17 Creative, ROM devices including but not limited to Macronix MX23L512 ROM  
18 devices.

19           41. Upon information and belief, Macronix Taiwan actively induced the  
20 direct infringement by other persons, including Nintendo America and Macronix  
21 America. Macronix Taiwan had actual knowledge of, or acted in an objectively  
22 reckless manner in disregard of and with deliberate indifference to, the '497 Patent,  
23 at the time of the infringing acts, and further knew and intended that infringing  
24 products including Macronix ROM devices such as MX23L4005 ROM devices and  
25 Macronix MX23L51208 ROM devices were being used, sold, or offered for sale in,  
26 or imported into, the United States without authority—including but not limited to  
27 MX23L512 ROM devices being sold or offered for sale by Macronix America in the  
28 United States and the Macronix MX23L4005 ROM devices incorporated in



1 Nintendo Wii™ game consoles and Macronix MX23L51208 ROM devices  
2 incorporated in Nintendo DS game cartridges being sold or offered for sale by  
3 Nintendo America in the United States.

4 42. Each of the Defendants knew of, or acted in an objectively reckless  
5 manner in disregard of and with deliberate indifference to, the '497 Patent at the  
6 time of the infringing acts, and further knew and intended that infringing products  
7 including Macronix ROM devices such as Macronix MX23L4005 ROM devices  
8 incorporated in Nintendo Wii game consoles and Macronix MX23L51208 ROM  
9 devices incorporated in Nintendo DS game cartridges were being used, sold, or  
10 offered for sale in or imported into the United States without authority.

11 43. Creative has been damaged by Defendants' infringement of the '497  
12 Patent.

13 44. Defendants' infringement of the '497 Patent has been willful.

14 45. As a direct and proximate result of Defendants' infringement of the  
15 '497 Patent, Creative has been damaged in an amount yet to be determined.

16 **SECOND CLAIM FOR RELIEF**

17 **(INFRINGEMENT OF U.S. PATENT NO. 5,812,461**  
18 **AGAINST DEFENDANTS MACRONIX AMERICA AND NINTENDO**  
19 **AMERICA)**

20 46. Paragraphs 1 through 45 are incorporated by reference as if restated  
21 fully herein.

22 47. Macronix America has infringed at least one claim of the '461 Patent.

23 48. Nintendo America has infringed at least one claim of the '461 Patent.

24 49. The exemplary infringing products include Macronix MX23L512 ROM  
25 devices as well as Macronix MX23L4005 ROM devices incorporated in Nintendo  
26 Wii game consoles and Macronix MX23L51208 ROM devices incorporated in  
27 Nintendo DS game cartridges.

28 50. Upon information and belief, Nintendo America directly infringed at  
least one claim of the '461 Patent by making, using, offering for sale, and/or selling



1 in the United States, and/or importing into the United States, without authority by  
2 Creative, Macronix ROM devices such as Macronix MX23L4005 ROM devices  
3 incorporated in Nintendo Wii game consoles and Macronix MX23L51208 ROM  
4 devices incorporated in Nintendo DS game cartridges.

5 51. Upon information and belief, Macronix America directly infringed at  
6 least one claim of the '461 Patent by making, using, offering for sale, and/or selling  
7 in the United States, and/or importing into the United States, without authority,  
8 ROM devices including but not limited to Macronix MX23L512 ROM devices.

9 52. Creative has been damaged by Defendants' infringements of the '461  
10 Patent.

11 53. As a direct and proximate result of Defendants' infringement of the  
12 '461 Patent, Creative has been damaged in an amount yet to be determined.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Creative prays for relief and judgment as follows:

15 A. That each Defendant, directly and/or indirectly, has infringed the '497  
16 Patent;

17 B. That each Defendants' infringement of the '497 Patent has been willful;

18 C. That Defendants Macronix America and Nintendo America have  
19 infringed the '461 Patent;

20 D. That Creative be awarded all damages adequate to compensate it for the  
21 infringements by each Defendant, such damages to be determined by a jury and, if  
22 necessary to adequately compensate Creative for the infringement, an accounting of  
23 all damages, and that all awarded damages be trebled pursuant to 35 U.S.C. § 284;

24 E. That Creative be awarded pre-judgment and post-judgment interest  
25 pursuant to 35 U.S.C. § 284;

26 F. That this case be declared an exceptional case within the meaning of 35  
27 U.S.C. § 285 and that Creative be awarded the attorneys' fees, costs, and expenses  
28 incurred in prosecuting this action; and



1 G. That Creative be awarded such other and further relief as this Court  
2 deems just and proper.

3  
4 Dated: January \_\_, 2011

Respectfully submitted:

5 **BARNES AND THORNBURG LLP**  
6 TODD G. VARE

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9 By: \_\_\_\_\_  
10 Attorneys for Plaintiff Creative Integrated  
11 Systems, Inc.

12 Dated: January \_\_, 2011

13 **ZUBER & TAILLIEU LLP**  
14 YURI MIKULKA  
15 BENJAMIN C. DEMING

16 By: \_\_\_\_\_  
17 Attorneys for Plaintiff Creative Integrated  
18 Systems, Inc.



**JURY DEMAND**

Creative respectfully demands a jury trial on all issues and claims so triable.

Dated: January \_\_, 2011

Respectfully submitted:

**BARNES AND THORNBURG LLP**  
TODD G. VARE

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